

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
INNOVATIVE PROJECT DELIVERY DIVISION MEMORANDUM**

GENERAL SUBJECT:	PPTA Proposal Quality Control Review Procedures	NUMBER:	<u>IPD 05-02.0</u>
		DATE:	<u>December 9, 2005</u>
		SUPERSEDES:	<u>N/A</u>
SPECIFIC SUBJECT:	Phase 1 - Quality Control review procedures for proposals submitted to VDOT under the Public Private Transportation Act of 1995 (PPTA or Act)	SUNSET/ EXPIRES:	<u>In effect until superseded</u>

Original Signature on File
Thomas W. Pelnik, III P.E.
Director, Innovative Project Delivery Division

PURPOSE: To establish review procedures for the Phase 1 - Quality Control of the PPTA implementation guidelines, in response to unsolicited or solicited proposals submitted pursuant to the PPTA.

OBJECTIVES: Comply with the policy and requirements of the Act and the guidelines; promptly review proposals in a consistent manner; and advance proposals that optimize the use of public and private resources to provide contracts with the best value to the Commonwealth.

BACKGROUND: The General Assembly amended and reenacted the PPTA, in Chapter 504 of the 2005 Acts of the General Assembly. The Governor approved the amendments on March 22, 2005. The changes to the law apply to all projects not under contract before January 1, 2005.

In accordance with the law, § [56-573.1](#). Procurement, the Secretary of Transportation updated the PPTA implementation guidelines, effective October 31, 2005. The guidelines provide for a six-phase proposal evaluation and development process as noted below.

- Phase 1 – Quality Control
- Phase 2 – Independent Review Panel
- Phase 3 – Oversight Board Recommendation
- Phase 4 – Submission and Selection of Detailed Proposal
- Phase 5 – Negotiations
- Phase 6 – Comprehensive Agreement

This memorandum addresses procedures for Phase 1 – Quality Control.

PPTA quality control evaluation procedures

I. Policy Requirements

The policy of the Act is written in § 56-558. In general, the policy requires that projects satisfy a public need, are consistent with needs identified in the appropriate transportation plan, and that such needs may not be satisfied by conventional procurement methods.

Complete the following checklist for conformance with VDOT Policy:

§ [56-558](#). Policy.

In accordance with subsection A. 1. of § [56-558](#):

- ☐ Does the proposal satisfy a public need for timely development and/or operation of transportation facilities within the Commonwealth?
 - ☐ What public need does the proposal satisfy?

- ☐ Does the proposal address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency? Will the proposed project
 - ☐ Improve safety, _____
 - ☐ reduce congestion, _____
 - ☐ increasing capacity, and/or _____
 - ☐ enhancing economic efficiency? _____
- ☐ Does the proposed project address needs identified in an appropriate plan:
 - ☐ VDOT's Six-Year Improvement Plan (SYIP) ? _____
 - ☐ An appropriate MPO or locality constrained long range plan (CLRP)? _____
 - ☐ An unconstrained long range plan? _____
- ☐ Note the source of information for items evaluated above. Contact central office and district planning divisions to access current information.

- ☐ Are such public needs satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated? _____

In accordance with subsections A. 2 & 3 and B of § [56-558](#):

If such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and/or operated; and authorizing private entities to develop and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare, then an action, other than the approval of the VDOT under § [56-560](#) of this chapter, shall serve the public purpose of this chapter if such action facilitates the timely development of a qualifying transportation facility or the operation of a qualifying transportation facility.

- ☐ Does the proposal offer to provide the facility to the public in a more timely, more efficient, or less costly fashion?

In accordance with subsections C of § [56-558](#):

It is the intent of the Act, among other things, to encourage investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities.

- ☐ Does the proposal offer equity investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities?

II. Approval Requirements

The requirements for approval by the responsible public entity (RPE, in this case, VDOT) are written in § [56-560](#). In general, the PPTA requires that private entities provide adequate information for VDOT to evaluate a proposal. This information includes description of the proposed development or operations, an approximate price and a schedule, in a section of the proposal that will not be held confidential. The following items are critical for satisfaction of Quality Control:

- ☐ A description of the proposed facility or project (note that transportation facility is defined in the Act);
- ☐ A description of the project team and its qualifications to complete the scope of work,
 - o Which entity leads the team?
 - o What are the responsibilities of each team member?
 - o Who is the sole point of contact with the authority to represent the team?
 - o Which entity would enter into a contract with VDOT?;
- ☐ A proposed schedule (schematic level);
- ☐ A price estimate and complete disclosure for requirements of any public funds;
- ☐ The proposer's point of contact, including address and phone number;
- ☐ A description of compliance with Policy requirements (public purpose and need);
- ☐ Does the proposal address VDOT's priorities?; and
- ☐ Does the proposal pertain to a project for which VDOT plans to issue a Solicitation for Proposal?

Complete the following checklist for conformance with VDOT approval:

§ [56-560](#). Approval by the responsible public entity.

In accordance with subsection A of § [56-560](#):

Review the written proposal for compliance with the Act. Note that all items required by § [56-560](#) may not be developed at the time of a conceptual proposal. In such cases, the proposer may simply note that such information will be provided if advanced to Phase 4 (the detailed proposal stage). The following information is required by the Act. Of this list, items 2, 3, 8, 9, and 10 are essential for satisfying the Quality Control review:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;

- ☐ 2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;
- ☐ 3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;

4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;
5. Information relating to the current transportation plans, if any, of each affected jurisdiction;
6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;
- ☐ 8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment proposed by the private entity;
- ☐ 9. The names and addresses of the persons who may be contacted for further information concerning the request;
- ☐ 10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and
11. Such additional material and information as VDOT may reasonably request pursuant to its guidelines or other written instructions.

III. Procurement Requirements

The procurement requirements of the Act are written in § [56-573.1](#). In general, procurement under the PPTA is exempt from the requirements of the Virginia Public Procurement Act. Additionally, VDOT must follow its PPTA implementation guidelines and procedures consistent with competitive sealed bidding, unless it serves the public purpose to proceed in accordance with competitive negotiation procedures. However, in the latter case, VDOT must make a finding of public interest, approved by the Secretary of Transportation, that the merits of the proposals warrant a best value procurement.

In regards to VDOT's Quality Control review, relative to § [56-573.1.2](#) VDOT will focus on subsections (ii), (vi), and (x). In addition, VDOT will focus on factors highlighted in the fourth paragraph of § [56-573.1](#): on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

Complete the following checklist for conformance with VDOT Procurement requirements:

§ [56-573.1](#). Procurement.

In accordance with subsection 2 of § [56-573.1](#):

VDOT may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § [2.2-4301](#) and subsection B of § [2.2-4310](#). VDOT shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered, if applicable, include:

- (i) the proposed cost of the qualifying transportation facility;
- ☐ (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity;

- (iii) the proposed design, operation, and feasibility of the qualifying transportation facility;
- (iv) the eligibility of the facility for priority selection, review, and documentation timelines under VDOT's guidelines;
- (v) local citizen and public entity comments;
 - ☐ (vi) benefits to the public;
- (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- (viii) the private entity's plans to employ local contractors and residents;
- (ix) the safety record of the private entity;
 - ☐ (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and
- (xi) other criteria that VDOT deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on

- ☐ Is the proposed scope complex, or does it satisfy an urgent need?, or
- ☐ Does the private entity offer unusual risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments?, or
- ☐ Does the private entity offer a finance plan that includes an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available?
- ☐ If pursuing procurement via competitive negotiation, has VDOT proceeded according to the implementation guidelines adopted by it pursuant to this subdivision, and stated the reasons for its determination in writing?
- ☐ Provide a recommendation for/against advancement of proposal(s) from the Director, Innovative Project Delivery Division to the Chief Engineer;
- ☐ Draft a memorandum from the Chief Engineer to the Commissioner for/against advancement of proposal(s); and
- ☐ Draft a letter from the Commissioner to the Secretary of Transportation stating his decision, and request their concurrence in accordance with the guidelines before the Independent Review Panel is convened. A concurrence form for approval of the procurement method is included in the Implementation Guidelines.